

SENATE BILL No. 449

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-26.

Synopsis: Underground plant protection. Requires the operator of an underground facility to join the Indiana Underground Plant Protection Service (IUPPS) or its successor organization. Requires an operator to provide information concerning the locations of its underground facilities to IUPPS. Requires notice of an excavation or demolition to be provided to the association at least three days before work commences. (Current law requires notice of at least two days.) Provides that a person who: (1) is required to, but fails to, provide notice of an excavation or demolition to the association; or (2) knowingly fails to observe certain precautions before or during an excavation or demolition; commits a Class D felony. Deletes obsolete provisions requiring operators to record underground facility locations with county recorders. Makes conforming amendments. Repeals an obsolete provision concerning the responsibilities of IUPPS.

Effective: July 1, 2009.

Charbonneau

January 14, 2009, read first time and referred to Committee on Utilities & Technology.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 449

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-26-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided by this
3 section, this chapter does not apply to the following:

- 4 (1) Excavation using only nonpowered hand tools.
5 (2) Excavation using only animals.
6 (3) Tilling of soil for agricultural purposes, such as plowing,
7 planting, and combining.
8 (4) Surface coal mining and reclamation operations conducted
9 under a permit issued by the natural resources commission under
10 IC 14-34.
11 (5) Railroad right-of-way maintenance or operations.

12 **(6) Underground probing for purposes of gas mitigation.**

13 (b) This chapter does apply to blasting, setting drainage tile,
14 subsoiling, and other subsurface activities.

15 (c) Sections 16, 19, 20, and 22 of this chapter apply to the
16 construction and installation of railroad signal facilities and drainage
17 facilities at public grade crossings.



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SECTION 2. IC 8-1-26-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. As used in this chapter, "association" means an organization **known as the Indiana Underground Plant Protection Service, or its successor organization**, formed in Indiana to provide for mutual receipt of notice of excavation or demolition for the organization's member operators. ~~that have underground facilities in Indiana.~~

SECTION 3. IC 8-1-26-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. As used in this chapter, "operator" means a person who owns or operates an underground facility, **other than an underground facility that:**

(1) **is located on real property that the person owns or occupies; and**

(2) **the person operates for the person's benefits.**

SECTION 4. IC 8-1-26-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. As used in this chapter, "person" means an individual, a corporation, a partnership, a limited liability company, an association, or other entity organized under the laws of any state. The term includes state, local, and federal agencies. **The term does not include the association.**

SECTION 5. IC 8-1-26-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. ~~(a) This section applies to recordings made with a county recorder before September 1, 2004.~~

~~(b) Except as provided in subsection (c);~~ (a) An operator that has underground facilities located in Indiana **must become a member of the association** and shall record with the county recorder of each county in which the facilities are located a list containing **provide the following information to the association:**

(1) The name of each township ~~in the~~ and county in which the operator has underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed.

(2) The list ~~must include the~~ name of the operator. ~~and~~

(3) The name, title, address, and telephone number of the operator's representative designated to receive the written or telephonic notice of intent required by section 16 of this chapter.

~~(c)~~ (b) An operator shall ~~record~~ **report** any changes in the information contained in the list recorded under subsection ~~(b)~~ (a) with the ~~county recorder of the county in which these facilities are located~~ **association** within thirty (30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the

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original list recorded information reported under subsection (b): (a).

(d) The county recorder shall charge a fee in accordance with IC 36-2-7-10.

(e) An association meeting the requirements of section 17 of this chapter shall be responsible for providing the information required in subsections (b) and (c) for the association's members and shall be responsible for paying the fee contained in subsection (d) for the association's members.

SECTION 6. IC 8-1-26-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) Except as provided in section 19 of this chapter, before commencing an excavation or demolition operation described in section 14 of this chapter each person responsible for the excavation or demolition must **shall** serve written or telephonic notice **on the association of the person's intent** to excavate or demolish. The notice must be received at least ~~two (2)~~ **three (3)** full working days but not more than twenty (20) calendar days before the commencement of the work. **Upon receiving notice, the association shall immediately notify each operator that has underground facilities located in the proposed area of excavation or demolition.** However, a person responsible for excavation or demolition may commence work before the elapse of ~~two (2)~~ **three (3)** full working days if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that the affected operators have no facilities in the location of the proposed excavation or demolition.

(b) For a notice served under this section before September 1, 2004, the notice must be served on each operator, or each operator's association, who has recorded a list required by section 15 of this chapter indicating that the operator has underground facilities located in the proposed area of excavation or demolition.

(c) After August 31, 2004, a notice under this section must be served on the association described in section 17(c) of this chapter. (b) A county recorder who receives an inquiry from a person seeking to provide notice of an excavation or a demolition under this section shall refer the person to the association. ~~described in section 17(c) of this chapter.~~ After receiving a notice under this section, the association shall

(1) determine whether one (1) or more of the association's members have underground facilities located in the proposed area of excavation or demolition, based on recordings made under section 15 or 15.5 of this chapter; and

(2) provide notice of the proposed excavation or demolition to any

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member identified under subdivision (1) as having each operator that has underground facilities located in the proposed area of excavation or demolition.

(d) (c) A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the association, the operator, the person responsible for demolition, and the project owner, to remove or protect the operator's facilities before demolition of the structure is commenced.

(e) (d) The written or telephonic notice required by subsection (a) must contain the following information:

(1) The name, address, and telephone number of the person serving the notice, and, if different, the person responsible for the excavation or demolition.

(2) The starting date, anticipated duration, and type of excavation or demolition operation to be conducted.

(3) The location of the proposed excavation or demolition.

(4) Whether or not explosives or blasting are to be used.

(5) The approximate depth of excavation.

(f) (e) If the notice required by this section is by telephone, the operator or association shall maintain an adequate record of the notice for three (3) six (6) years to document compliance with this chapter. A copy of the record shall be furnished to the person giving notice to excavate or demolish upon written request. For a notice given by telephone after August 31, 2004, the association described in section 17(c) of this chapter is responsible for maintaining the record of notice required by this subsection.

(f) A person who is required, but fails to, provide notice under this section commits a Class D felony.

SECTION 7. IC 8-1-26-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. (a) Before September 1, 2004, operators, in any combination or group, may form and operate an association in Indiana to record for the association's members the information required by section 15 of this chapter and to provide for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter. An association may provide the service on behalf of operators having underground facilities in Indiana and shall record with the county recorder of the county in which those facilities are located the following information:

(1) The telephone number and address of the association.

(2) A description of the geographical area served by the association.

(3) A list of the names and addresses of each operator receiving

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the service from the association.

(b) An association formed under this section must have the capability to serve any operator located in Indiana. Associations that qualify under this section include, without limitation, the "One Call" system that is managed by the Indiana Underground Plant Protection Service.

~~(c) After August 31, 2004;~~ (a) An operator that has underground facilities located in Indiana must be a member of the Indiana Underground Plant Protection Service or its successor organization, if The articles of incorporation or the bylaws of the Indiana Underground Plant Protection Service or its successor organization **shall** do the following:

(1) Provide that the board of directors of the Indiana Underground Plant Protection Service or its successor organization is composed of:

(A) five (5) members representing electric utilities other than municipal electric utilities, including corporations organized or operating under IC 8-1-13 or corporations organized under IC 23-17, some of whose members are local district corporations (as described in IC 8-1-13-23);

(B) five (5) members representing investor owned gas utilities, including pipelines;

(C) five (5) members representing telecommunications providers, at least one (1) of whom is a provider of cable television service;

(D) five (5) members representing water or sewer utilities other than municipal water or sewer utilities; and

(E) five (5) members representing political subdivisions, including municipal utilities, which must include the political subdivision that owns the largest waterworks utility in Indiana.

(2) Require the affirmative vote of at least sixty percent (60%) of each category of members ~~in~~ **appointed under** subdivision (1) to approve an increase, a decrease, or any other adjustment to the membership dues, rates, tariffs, locate fees, or any other charges imposed by the Indiana Underground Plant Protection Service or its successor organization.

~~(d)~~ (b) The association ~~identified in subsection (c)~~ shall provide the services described in subsection (a) by:

(1) recording for the association's members the information required by section 15.5 of this chapter; and

(2) providing for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter.

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(c) The association identified in subsection (c) shall:

- (1) annually update the association's grid map data, including street addresses; and
- (2) make reasonable efforts to reduce incorrect locate requests issued to the association's members.

SECTION 8. IC 8-1-26-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) Each operator or association notified under section 16 of this chapter shall, in not more than two (2) full working days of after receiving the notice of intent provided in section 16 of this chapter (unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator), supply to the person responsible for the excavation or demolition the following information, using maps when appropriate:

- (1) The approximate location and description of all the operator's underground facilities that may be damaged as a result of the excavation or demolition.
- (2) The location and description of all facility markers indicating the approximate location of the underground facilities.
- (3) Any other information that would assist that person in locating and avoiding damage to the underground facilities, including providing adequate temporary markings indicating the approximate location of the underground facility and locations where permanent facility markers do not exist.

(b) Facility locate markings must consist of paint, flags, or stakes or any combination that mark the approximate location of the underground facilities. **The method of marking must be appropriate for the location of the underground facilities.**

(c) Color coding of facility locate markings indicating the type of underground facility must conform to the following color coding:

Facility and Type of Product	Specific Group	Identifying Color
(1) Electric power distribution and transmission		Safety red
(2) Municipal electric systems		Safety red
(3) Gas distribution and transmission		High visibility safety yellow
(4) Oil distribution and transmission		High visibility safety yellow
(5) Dangerous materials, product		

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- 1 lines, steam lines High visibility
 2 safety yellow
 3 (6) Telephone and telegraph
 4 systems Safety alert
 5 orange
 6 (7) Cable television Safety alert
 7 orange
 8 (8) Police and fire
 9 communications Safety alert
 10 orange
 11 (9) Water systems Safety precaution
 12 blue
 13 (10) Sewer systems Safety green
 14 (11) Proposed excavation White

15 (d) Each operator ~~or association~~ notified under section 16 of this
 16 chapter shall, within two (2) full working days of receiving the notice
 17 of intent provided in section 16 of this chapter, provide notification to
 18 the person responsible for the excavation or demolition if the operator
 19 has no facilities in the location of the proposed excavation or
 20 demolition.

21 **(e) This section does not apply to an operator making an**
 22 **emergency repair to its own underground facility.**

23 SECTION 9. IC 8-1-26-19 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 19. A person
 25 responsible for emergency excavation or demolition to ameliorate an
 26 imminent danger to life, health, property, or loss of service is not
 27 required to comply with the notice requirements of section 16 of this
 28 chapter. However, that person shall:

- 29 (1) give, as soon as practicable, oral notice of the emergency
 30 excavation or demolition to ~~each operator having underground~~
 31 ~~facilities located in the area or to an~~ the association; ~~described in~~
 32 ~~section 17 of this chapter that serves an operator where the~~
 33 ~~excavation or demolition is to be performed;~~ and
 34 (2) request emergency assistance from each operator identified by
 35 **the association as having underground facilities located in the**
 36 **area of the emergency excavation or demolition** in locating and
 37 providing immediate protection to the operator's underground
 38 facilities.

39 SECTION 10. IC 8-1-26-20 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 20. **(a)** In addition to
 41 the notice required in section 16 of this chapter, a person responsible
 42 for an excavation or demolition operation under section 14 of this

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chapter shall do all of the following:

(1) Plan the excavation or demolition to avoid damage to or minimize interference with underground facilities in and near the construction area.

(2) Maintain a clearance between an underground facility, as marked by the operator, and the cutting edge or point of mechanized equipment. The clearance ~~under subdivision (2)~~ must be not less than two (2) feet on either side of the outer limits of the physical plant. However, if the clearance is less than two (2) feet, exposure of the underground facility may be accomplished only by the use of hand excavation, air cutting, or vacuum excavation.

(3) Notify the association if:

(A) there is evidence of an unmarked underground facility in the area of the excavation or demolition; or

(B) the markings indicating the location of an underground facility have become illegible.

(b) A person who knowingly violates subsection (a) commits a Class D felony.

SECTION 11. IC 8-1-26-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 21. (a) Except as provided in subsection (b), a person responsible for an excavation or a demolition operation under section 14 of this chapter that results in damage to an underground facility shall:

(1) immediately upon discovery of the damage, notify the ~~operator of the facility~~ **association** of the location and nature of the damage; and

(2) allow the operator **of the facility** reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of the facility.

(b) A person responsible for an excavation or a demolition operation under section 14 of this chapter that results in damage to an underground facility permitting the escape of flammable, toxic, or corrosive gas or liquid shall:

(1) immediately upon discovery of the damage, notify the ~~operator~~ **association** and local police and fire departments having jurisdiction; and

(2) take other action, **consistent with industry practice**, necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire personnel.

SECTION 12. IC 8-1-26-15.5 IS REPEALED [EFFECTIVE JULY

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